APPEAL NO. 020749
FILED MAY 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 1, 2002. He found that because two doctors concurred on the need for spinal surgery, the appellant (carrier) should be liable for the cost thereof.

The carrier appeals, arguing that the decision should have been held in abeyance pending a resolution of the extent of the respondent's (claimant) injury. The claimant responds that the carrier failed to activate its belated dispute, contending that her back injury was an ordinary disease of life.

DECISION

We affirm the hearing officer's decision.

The hearing officer has properly applied the rule on spinal surgery in effect at the time relevant to this determination, and afforded presumptive weight to the two concurring opinions. The hearing officer could read the entire report of the concurring doctor, along with his indication that he agreed with the recommended surgery (and did not propose his own limitation on the scope of surgery by indicating disagreement), and conclude that this was an agreement as to the proposed type of surgery. In Texas Workers' Compensation Commission Appeal No. 001401, decided July 25, 2000, the Appeals Panel addressed the issue raised by the carrier and stated:

> In order to qualify as a concurrence under Rule 133.206(a)(13), the second opinion doctor must agree on the proposed type of spinal surgery and the region (cervical, thoracic, lumbar, or sacral) of the spine involved. However, the second opinion doctor does not have to agree on the approach (anterior, posterior, instrumentation, cages, etc.) or on the number of levels within the region in which the recommended surgery will be performed.

The hearing officer did not err in this case by refusing to continue the CCH solely on the basis of a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) purporting to dispute extent of injury, which dispute had never been activated in the nearly two years prior to this CCH. The TWCC-21 was filed at the end of February 2000; the recommendation for spinal surgery was initially made by the treating doctor in January 2001. There was no evidence or contention by the carrier that there was an actual dispute resolution pending on this matter from February 2000 until the date of the CCH. There was no attempt even at this CCH to add the issue of extent. As noted by the hearing officer at the CCH, if a dispute over extent had been diligently pursued by the carrier, even after the recommendation for surgery was first made, then there would have been an extent

determination well before any decision on spinal surgery was required.

We affirm the decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge